



Terms of Trade

1. Definitions

- 1.1 "Spiral Drillers" shall mean Spiral Drillers Civil Limited", or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, or any person acting on behalf of and with the authority if the customer, or any person purchasing products and services from Spiral Drillers.
- 1.3 "Services" shall mean all services, materials, goods and advice provided by Spiral Drillers to the customer and shall include without limitation all drilling and piling services, retaining wall construction and all associated services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of services by Spiral Drillers to the customer.
- 1.4 "Price" shall mean the cost of the services as agreed between Spiral Drillers and the customer and includes all disbursements or charges Spiral Drillers pay to others on the customer's behalf subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by Spiral Drillers shall constitute a bonding contract and acceptance of the terms and conditions contained herein.

3. Collection and Use of Information

- 3.1 The customer authorises Spiral Drillers to collect, retain and use any information about the customer, for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any services provided by Spiral Drillers to any other party.
- 3.2 The customer authorises Spiral Drillers to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purpose of the Privacy Act 1993.

4. Price

- 4.1 Where no price is stated in writing or agreed to orally the services shall be deemed to be sold at the current amount as such services are sold by Spiral Drillers at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the services that is beyond the control of Spiral Drillers between the date of the contract and delivery of the services.

5. Payment

- 5.1 Payment of the services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").

- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month.
- 5.3 Any expenses, disbursements and legal costs incurred by Spiral Drillers in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

6. Quotation

- 6.1 Where a quotation is given by Spiral Drillers for services:
 - 6.1.1 unless otherwise agreed, the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 the quotation shall be exclusive of GST unless specifically stated to the contrary; and
 - 6.1.3 the quotation does not include the cost of excavation in rock requiring the use of pneumatic or hydraulic equipment for extraction, planking, strutting, shoring or underpinning; locating, diverting or sealing off existing services; setting out of the work; creation of temporary access roads; obtaining permits or consents from the local authority or other person; or any extra work or variations to the quotation including without limitation extra work required due to non-disclosure of relevant matters by the customer at the time of the quotation, or delays caused by the customer or any other party beyond the control of Spiral Drillers.
- 6.2 Where services are required in addition to the quotation the customer agrees to pay for the additional cost of such services.

7. Warranties by customer

- 7.1 The customer warrants that:
 - 7.1.1 it has and shall continue to provide Spiral Drillers with all information and assistance relevant to the carrying out of work that is the matter of this contract; and
 - 7.1.2 it has obtained all necessary resource consents from the relevant local authority and has informed Spiral Drillers of all matters relating to such consents; and
 - 7.1.3 prior to commencement of any work it shall mark all boundaries of the land where work is to proceed and mark all areas of such land where work is required and shall inform Spiral Drillers of all such markings and point out to the driver of any machine or vehicle about to excavate or executing the work where work is to be executed and the extent of the work to be carried out and if any spoil is to be removed, the place where it is to be deposited; and
 - 7.1.4 it has located, marked and advised Spiral Drillers of all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling and any other utilities that are on, or near, or adjacent to the land upon which any work is to proceed; and
 - 7.1.5 it has advised Spiral Drillers of any possibility of or knowledge of any subsidence, slip, erosion, flooding or any other thing which might constitute a hazard on the land where work is to proceed or on any adjacent land.

8. Delay

- 8.1 The time agreed for the completion of services shall not be an essential term of this contract and Spiral Drillers shall not be responsible for any reasonable delay to completion of the contract and time shall not be deemed of the essence.
- 8.2 Where Spiral Drillers has contracted to complete the services by instalments and Spiral Drillers fails to complete one or more instalments, the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as to severable breach.

9. Subcontractors and agency

- 9.1 The customer authorises Spiral Drillers to contract either as principal or agent for the provision of services that are the matter of this contract.
- 9.2 Where Spiral Drillers enters into a contract of the type referred to in clause 9.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

10. Liability

- 10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Spiral Drillers which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Spiral Drillers, Spiral Drillers' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2 Except as otherwise provided by clause 10.1 Spiral Drillers shall not be liable for:
 - 10.2.1 any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from services provided by Spiral Drillers to the customer; and
 - 10.2.2 the customer shall indemnify Spiral Drillers against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising or as a result of the negligence of Spiral Drillers or otherwise, brought by any person in connection with any matter, act, omission, or error by Spiral Drillers, its agent or employees in connection with the services.

11. Warranty

- 11.1 No representation, condition, warranty or promise expressed or implied by law or otherwise applies to the services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 11.2 Spiral Drillers does not provide any warranty that the services are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

12. Consumer Guarantees Act

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires services from Spiral Drillers for the purposes of a business in terms of section 2 and 43 of that Act.

13. Personal Guarantee of Company Directors or Trustees

13.1 If the customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Spiral Drillers agreeing to supply services and grant credit to the customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Spiral Drillers the payment of any and all monies now or hereafter owed by the customer to Spiral Drillers and indemnify Spiral Drillers against non-payment by the customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

14. Cancellation

14.1 Spiral Drillers shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of services to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.

14.2 Any cancellation or suspension of this agreement shall not affect Spiral Drillers' claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Spiral Drillers under this contract.

15. Miscellaneous

15.1 Spiral Drillers shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

15.2 Failure by Spiral Drillers to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Spiral Drillers has under this contract.

15.3 If any provision of the contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of Spiral Drillers.

15.5 Where these terms and conditions of trade are at variance with the order or instructions from the customer these terms and conditions of trade shall prevail.

15.6 Unless Spiral Drillers elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.



Brian Hannah
Director



Andrew Hannah
Director